

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____

,
Plaintiff

INDEX NO: _____

-against-

**VERIFIED ANSWER TO
FORECLOSURE COMPLAINT**

,
Defendant.

Defendant _____ **answers as follows:**

General Denial

I plead the following Defenses and Counterclaims:

- Lack of Standing:** Plaintiff, upon information and belief, does not own the note and mortgage. Plaintiff therefore does not have standing to sue because it was not the legal owner of the note and/or mortgage at the time it commenced this foreclosure lawsuit.
- Foreclosure Cause of Action:** Plaintiff, upon information and belief, does not own the note and mortgage. Because ownership of the note and mortgage is an element of a foreclosure cause of action, Plaintiff has no right to foreclose.
- Statute of Limitations** (NY Civil Practice Law and Rules § 213(4)): Upon information and belief, Plaintiff may not sue on all or part of the mortgage debt because Plaintiff commenced this action more than six years after the debt became due.
 - Additionally, the entire foreclosure action is time-barred by the statute of limitations because Plaintiff commenced this action more than six years after it accelerated the mortgage debt. Defendant requests that the mortgage be cancelled and discharged pursuant to NY Real Property Actions and Proceedings Law § 1501(4).

- Improper Service of the Summons and Complaint** (NY Civil Practice Law and Rules Section 308):

I was not properly served with the Summons and Complaint in any of the following three methods:

1. A copy of the Summons and Complaint were not handed to me in person; OR
2. A copy of the Summons and Complaint were not left at my home or business with a “person of suitable age and discretion” with another copy mailed within 20 days to my home or business; OR
3. A copy of the Summons and Complaint were not attached to my home or business door, with another copy mailed within 20 days to my home or business.

- Notice of Default:** Plaintiff failed to comply with the requirements for the notice of default in my mortgage loan agreement, a condition precedent to this foreclosure action.

- Reverse Mortgage Notice Requirement** (NY Codes, Rules and Regulations Title 3, § 79.9(a)(5)): Plaintiff failed to comply with the requirements of NY Codes, Rules and Regulations Title 3, § 79.9(a)(5), a condition precedent to this foreclosure action.

- 90-Day Notice Requirement** (NY Real Property Actions and Proceedings Law § 1304): Plaintiff failed to comply with the requirements of NY Real Property Actions and Proceedings Law § 1304, a condition precedent to this foreclosure action.

- 90-Day Notice Filing Requirement** (NY Real Property and Proceedings Law § 1306): Plaintiff failed to comply with the requirements of NY Real Property and Proceedings Law § 1306, a condition precedent to this foreclosure action.

- “Help for Homeowners in Foreclosure” Notice Requirement** (NY Real Property Actions and Proceedings Law Section 1303): I did not receive the notice “Help for Homeowners in Foreclosure” that was supposed to be served with the Foreclosure Summons and Complaint. Plaintiff failed to comply with the requirements of NY Real Property and Proceedings Law § 1303, a condition precedent to this foreclosure action.

- Pending Foreclosure Action** (NY Real Property Actions and Proceedings Law § 1301): Plaintiff impermissibly commenced this action because there is a prior pending action to recover all or part of the mortgage debt.

- Real Estate Settlement Procedures Act Early Intervention Requirement** (12 C.F.R. § 1024.39): Upon information and belief, Plaintiff violated the early intervention requirements of the Real Estate Settlement Procedures Act because (*check one or both if applicable*):
- Within 36 days of my delinquency, the loan servicer did not attempt to establish live contact with me to inform me about the availability of loss mitigation options.
 - Within 45 days of my delinquency, the loan servicer did not send me a written notice that included contact information for the servicer, a description of loss mitigation options available from the servicer, information about applying for loss mitigation, and a website listing housing counselors.
- Real Estate Settlement Procedures Act Pre-Foreclosure Review Requirement** (12 C.F.R. § 1024.41): Plaintiff impermissibly filed this foreclosure during the pre-foreclosure review period because (*check one or both if applicable*):
- Plaintiff commenced this action before my loan was more than 120 days delinquent.
 - I submitted a complete loss mitigation application to my loan servicer but Plaintiff commenced this action (1) before the loan servicer made a decision on that application, (2) before the time period to appeal the loan servicer's decision lapsed, or (3) before the loan servicer made a decision on an appeal I submitted in connection with the loss mitigation application.
- FHA Pre-Foreclosure Requirements:** My loan is insured by the Federal Housing Administration. Upon information and belief, the loan servicer/mortgagee has not complied with regulations of the Department of Housing and Urban Development because the loan servicer/mortgagee did not do one or more of the following (*check all that are applicable*):
- Send me a notice of default before the end of the second month of my delinquency (24 C.F.R. § 203.602).
 - Attempt to arrange a face-to-face interview with me before three full monthly installments due under the mortgage were unpaid (24 C.F.R. § 203.604).
 - Evaluate me for loss mitigation before four full monthly installments due under the mortgage were unpaid (24 C.F.R. § 203.605).
 - Wait until three full monthly installments due under the mortgage were unpaid before commencing this foreclosure action (24 C.F.R. § 203.606)

- VA Pre-Foreclosure Requirements:** My mortgage is guaranteed by the VA pursuant to Title 38 of the United States Code. The loan servicer has not complied with the regulations requiring that the servicer extend all reasonable forbearance options. Compliance with these regulations is a condition precedent to foreclose. Further, failure to comply with these rules gives rise to equitable defenses to this action.

- Active Service Member Protections** (Federal Service Members Civil Relief Act, 50 App. U.S.C. 501 et seq.; and New York State Soldiers' and Sailors' Civil Relief Act, NY Military Law Section 300 et seq.): An active service member is an owner of the property and is on the mortgage and qualifies for Active Military Service protections under state or local law.

- Certificate of Merit Requirement** (NY Civil Practice Law and Rules § 3012-b): Upon information and belief, Plaintiff failed to comply with the Certificate of Merit requirements of NY Civil Practice Law and Rules § 3012-b.

- Request for Judicial Intervention** (NY Codes, Rules and Regulations Title 22, § 202.12-a(b)): Upon information and belief, Plaintiff did not file a Request for Judicial Intervention.

- Attorney's Fees** (NY Real Property Law § 282): If I retain counsel, I am entitled to recover my attorney's fees in defending this action pursuant to New York Real Property Law § 282.

- Excessive Interest** (NY Civil Practice Law and Rules § 5001(a)): Plaintiff has unreasonably delayed filing this action, failed to file the Request for Judicial Intervention or engaged in other dilatory conduct causing excessive interest to accrue which the Court may reduce or toll, as a matter of equity and by operation of the CPLR.

- Excessive Interest and Fees** (NY Civil Practice Law and Rules § 3408(f)): In a prior foreclosure action, Plaintiff failed to negotiate in good faith pursuant to CPLR 3408(f). This failure to negotiate in good faith has caused excessive interest and fees to accrue which Plaintiff, as a matter of equity and by operation of the CPLR, is not entitled to recover.

- Action Commenced Against a Deceased Party:** This action is a nullity because it was commenced against Defendant _____ after that party was already deceased and it should, therefore, be dismissed.

- Refused Payments:** I have tried to tender payments which would have paid the principal, interest, and fees I owed at the time in full, but the lender refused to accept the payment and proceeded to foreclosure against me wrongfully.

Partial or Full Payment: I have made payments which have not been properly credited and are not reflected in the Complaint.

Other explanation or additional information:

Origination Issues: On the date of loan origination, statements were made to intentionally convince me to enter the mortgage and note at issue in this foreclosure action. I relied upon those statements and I was fraudulently induced to sign the mortgage and note. I was told that:

I would receive a fixed rate loan, but instead I received an adjustable rate loan.

My mortgage term would be for a shorter term than I actually received.

My total monthly payment would include principal, interest, property taxes and insurance, but instead my monthly payment only included principal and interest.

My monthly payment would be lower than the resulting monthly payment I actually received.

My loan amount would be for a lower amount than I actually received.

Other Additional Information: _____

I was injured by the above fraudulent statements because I paid more for my mortgage than I could afford and ultimately fell into foreclosure as a result of the higher cost of the mortgage.

Other Defenses or Counterclaims (*attach additional pages if needed*):

Other Facts Concerning Your Mortgage (*attach additional pages if needed*):

Wherefore, Defendant requests that the Complaint be dismissed; that the relief requested by Defendant be granted in its entirety; that Defendant be granted costs and attorneys' fees if he or she retains counsel; and any other relief allowed by law deemed just and proper by this Court in the exercise of its equity jurisdiction in this foreclosure action.

Dated: _____, 20_____
_____, New York

_____, Defendant *Pro Se*
(Defendant's Signature)

(Defendant's Name)

(Defendant's Address)

(Defendant's Address)

(Defendant's Telephone Number)

Prepared with the assistance of counsel admitted in New York.

VERIFICATION

I, _____, being duly sworn, state that the within Answer is true to the best of my knowledge, except as to those matters alleged upon information and belief, which I believe to be true

(Defendant's Name)

(Defendant's Signature)

Sworn to and subscribed before me this
_____ day of _____, 20_____

Notary Public